

EXHIBIT A

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----X

3 UNITED STATES OF AMERICA,

4 v.

10 CR 131 (PKC)

5 MOHAMED IBRAHIM AHMED,

6 Defendant.

7 -----X

8 New York, N.Y.

9 June 13, 2012

3:53 p.m.

10 Before:

11 HON. P. KEVIN CASTEL,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 BENJAMIN NAFTALIS

JOHN P. CRONAN

Assistant United States Attorneys

18 FEDERAL DEFENDERS OF NEW YORK

19 Attorneys for Defendant

20 BY: SABRINA SHROFF

21 ALSO PRESENT: FOUAD ELSHIEKH, Arabic Interpreter

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1 (Case called)

2 THE COURT: First order of business, I will ask the
3 clerk to swear the interpreter.

4 (Interpreter sworn)

5 THE COURT: Thank you, sir.

6 Mr. Naftalis, why don't you bring me up to date on
7 your understanding of today's proceeding.

8 MR. NAFTALIS: Your Honor, my understanding of today's
9 proceeding is that the defendant intends to plead guilty to a
10 superseding information, S2 10 CR 131, pursuant to a plea
11 agreement dated June 13 of 2012.

12 THE COURT: All right. And, Ms. Shroff, I take it
13 you're in concurrence?

14 MS. SHROFF: Your Honor, that is my client's
15 application to the Court.

16 THE COURT: All right. I should advise counsel that I
17 have in my hand a 60-page draft of the decision on the motion
18 to suppress, which of course will now be suppressed. It was
19 ready to go earlier this week when I received a call from
20 counsel and I refrained from filing it.

21 So that's where we are. I advise you of that and I
22 take it, Ms. Shroff, it is still your decision that you and
23 your client wish to go forward with the plea proceeding.

24 Is that correct?

25 MS. SHROFF: May I?

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1 THE COURT: Yes.

2 MS. SHROFF: Okay.

3 (Defendant and counsel conferring)

4 MS. SHROFF: Your Honor, it would be nice to know if
5 we prevailed, but I've confirmed with my client and inform the
6 Court that he wishes to proceed with his guilty plea.

7 THE COURT: Okay. Well, you can all proceed from here
8 on with your best thoughts as to what the outcome would have
9 been. I say that to both sides.

10 Mr. Ahmed, before I accept a guilty plea from you I
11 must satisfy myself that you understand the rights you would
12 have if you went to trial and the rights you're giving up by
13 pleading guilty. Also I must satisfy myself that there's a
14 factual basis for a plea of guilty and that you understand the
15 consequences of pleading guilty.

16 So in a moment I'm going to have the clerk place you
17 under oath. I'm going to ask you certain questions. I'm going
18 to inform you of certain rights.

19 If I ask you something or I tell you something and you
20 don't quite understand, please tell me. I'll put it into
21 different words.

22 Also, if at any time this afternoon you wish to speak
23 in private with Ms. Shroff, please let me know that and I will
24 give you the opportunity to do that.

25 Do you understand that, sir?

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1 THE DEFENDANT: Yes.

2 THE COURT: All right. Please stand and the clerk
3 will administer the oath.

4 (Defendant sworn)

5 THE COURT: All right. Mr. Ahmed, please be seated.

6 You're now under oath and your answers to my questions
7 are subject to the penalties of perjury or of making a false
8 statement if you do not answer truthfully. Also, anything you
9 say today may be used in a prosecution for those crimes.

10 Do you understand that, sir?

11 THE DEFENDANT: Yes.

12 THE COURT: How old are you, Mr. Ahmed?

13 THE DEFENDANT: Thirty-eight.

14 THE COURT: All right. How far did you go in school?

15 THE DEFENDANT: I haven't finished high school.

16 THE COURT: All right. Are you now or have you
17 recently been under the care of a medical doctor?

18 THE DEFENDANT: No.

19 THE COURT: Do you have any physical complaints, any
20 medical problems at present?

21 THE DEFENDANT: No. But since I had my hernia
22 operation, I feel that the area that they made the operation in
23 is numb.

24 THE COURT: All right. How do you feel today?

25 THE DEFENDANT: Fine.

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1 THE COURT: Is your mind clear?

2 THE DEFENDANT: Yes.

3 THE COURT: Have you ever been treated for a mental
4 illness?

5 THE DEFENDANT: No.

6 THE COURT: Ms. Shroff, any doubts as to defendant's
7 competence to plead?

8 MS. SHROFF: No, your Honor.

9 THE COURT: Same question for Mr. Naftalis.

10 MR. NAFTALIS: No, your Honor.

11 THE COURT: Based upon my observations of Mr. Ahmed
12 and his responses to my questions, I find that he is fully
13 competent to enter an informed plea.

14 Mr. Ahmed, have you in fact discussed the charges
15 against you with your lawyer, Ms. Shroff?

16 THE DEFENDANT: Yes.

17 THE COURT: Have you had enough time to consider all
18 of your options in this case?

19 THE DEFENDANT: Yes.

20 THE COURT: Are you satisfied with your lawyer's
21 representation of you?

22 THE DEFENDANT: Yes.

23 THE COURT: All right. Now I have in front of me a
24 piece of paper which is titled the Waiver of Indictment, and I
25 will have the clerk place it in front of Mr. Ahmed.

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1 Mr. Ahmed, did you in fact sign that waiver of
2 indictment?

3 THE DEFENDANT: Yes.

4 THE COURT: Did you understand that you had the right
5 to have evidence underlying the charges presented to a grand
6 jury of 23 people and to have those people decide by a majority
7 vote whether you should be charged or not and that by signing
8 the waiver of indictment, you gave up that right and permitted
9 the government to file the charges based only on the signature
10 of the United States Attorney; do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: Did you read and understand the waiver
13 before you signed it?

14 THE DEFENDANT: Yes.

15 THE COURT: Did you discuss it with Ms. Shroff before
16 you signed it?

17 THE DEFENDANT: Yes. Right before you came in, your
18 Honor.

19 MS. SHROFF: Your Honor, may I just have a second?

20 THE COURT: You may.

21 (Defendant and counsel conferring)

22 MS. SHROFF: Your Honor, Mr. Ahmed just wants to make
23 one slight correction.

24 THE COURT: You may proceed.

25 THE DEFENDANT: Your Honor, this piece of paper was

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1 read by my attorney and the translator translated, but I didn't
2 read it myself.

3 THE COURT: All right. But the translator translated
4 the content of the paper to you?

5 THE DEFENDANT: Yes.

6 THE COURT: All right. And you understand you were
7 giving up the right to have this grand jury, this body of 23
8 people, decide whether or not you should be charged?

9 THE DEFENDANT: Yes.

10 THE COURT: I find that the waiver of indictment is
11 knowing and voluntary and it is accepted.

12 Well, first of all, I will deem the superseding
13 information to be filed in open court.

14 Ms. Shroff, have you and your client received, read,
15 and reviewed the superseding information bearing the docket No.
16 S2 10 CR 131?

17 MS. SHROFF: I have read it, your Honor, and it was
18 read to him through the Arabic interpreter who's translating
19 today.

20 THE COURT: Is there an application to waive the
21 public reading thereof?

22 MS. SHROFF: There is, your Honor. There is an
23 application to waive the public reading and, with the Court's
24 permission, for Mr. Ahmed to enter a guilty plea to it.

25 THE COURT: All right. I will take the latter point

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1 under advisement, but the public reading is waived.

2 Mr. Ahmed, I'm now going to explain you to certain
3 rights you would have if the case went to trial and rights you
4 would be giving up by pleading guilty.

5 Under the Constitution and laws of the United States,
6 you are entitled to a speedy and public trial by an impartial
7 jury on the charges contained in the information.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: If there were a trial, you would not have
11 to prove that you were innocent. The government would be
12 required to prove each element of each crime by proof beyond a
13 reasonable doubt. You would be presumed to be innocent. If
14 there were a trial, before you could be found guilty, a jury of
15 12 people would have to agree unanimously that you were guilty.

16 Do you understand all that?

17 THE DEFENDANT: Yes.

18 THE COURT: If there were a trial, at every stage of
19 your case you'd be entitled to be represented by a lawyer, and,
20 if you could not afford a lawyer, one would be appointed at
21 public expense.

22 Do you understand all that?

23 THE DEFENDANT: Yes.

24 THE COURT: If there were a trial, the witnesses for
25 the government would have to come to court to testify. You

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1 would be able to see and hear them, confront them. Your lawyer
2 would have a right to question them through cross-examination.
3 Your lawyer would be able to object to evidence offered by the
4 government. Your lawyer would be able to present evidence and
5 could ask the court to compel witnesses to appear at trial on
6 your behalf.

7 Do you understand all that?

8 THE DEFENDANT: Yes.

9 THE COURT: If there were a trial, you would have the
10 right to testify if you chose to do so. You could come up here
11 and take the witness stand. Also, you would have the right not
12 to testify and no one would be permitted to draw any inference
13 or suggestion of guilt from the fact that you decided not to
14 testify.

15 Do you understand all that?

16 THE DEFENDANT: Yes.

17 THE COURT: If there were a trial and the jury found
18 you guilty, you would have the right to appeal that finding.

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: Now, those are the rights you would have
22 if you went to trial. If I accept the plea of guilty from you,
23 there will be no trial. You will proceed to the sentencing
24 phase in which I will decide on the punishment to be imposed on
25 you.

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1 Do you understand all that?

2 THE DEFENDANT: Yes.

3 THE COURT: Even now you have the right to change your
4 mind. Instead of pleading guilty, you may plead not guilty and
5 go to trial.

6 Do you wish to plead not guilty and go to trial?

7 THE DEFENDANT: Yes, I understand.

8 THE COURT: No, the question is not whether you
9 understand, but whether you wish to plead not guilty and go to
10 trial in this case. If you would like to do that, you may do
11 that.

12 THE DEFENDANT: Yes, I will plead, your Honor.

13 THE COURT: I'm sorry, sir, I didn't hear your answer.
14 Yes -- I didn't hear what else you said, sir.

15 THE INTERPRETER: Plead.

16 THE COURT: The question you're being asked is: Do
17 you wish to plead not guilty and have a trial in this case?

18 THE DEFENDANT: No, your Honor. I will plead guilty.

19 THE COURT: All right. Mr. Ahmed, do you understand
20 that in Count One of the information you are charged with
21 conspiracy to provide material support to a foreign terrorist
22 organization, namely, Alshabaab?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that Count One carries a
25 maximum term of five years' imprisonment, a maximum term of

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1 supervised release of three years, a maximum fine of the
2 greatest of \$250,000, twice the gross pecuniary or monetary
3 gain derived from the offense or twice gross pecuniary loss to
4 persons other than yourself resulting from the offense, and a
5 \$100 mandatory special assessment; do you understand all that?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand that Count Two charges
8 you with conspiracy to receive military-type training from a
9 foreign terrorist organization, namely, Alshabaab; do you
10 understand that, sir?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand that Count Two carries a
13 maximum term of imprisonment of five years, a maximum term of
14 supervised release of three years, a maximum fine of the
15 greatest of \$250,000, twice the gross pecuniary gain derived
16 from the offense or twice the gross pecuniary loss to persons
17 other than yourself resulting from the offense, and a \$100
18 mandatory special assessment; do you understand all that?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand that the total maximum
21 term of imprisonment on Counts One and Two is ten years'
22 imprisonment?

23 THE DEFENDANT: Yes.

24 THE COURT: All right. Now, with regard to supervised
25 release, there are terms and conditions attached to it and if

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1 you do not live up to those terms and conditions, you can be
2 returned to prison for the full period of supervised release.

3 So say, for example, you receive a prison term
4 followed by a period of three years' supervised release and you
5 live up to the terms of supervised release for two years but
6 then you violate one of the terms, you can be returned to
7 prison for a full period of three years.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Mr. Ahmed, are you a U.S. citizen?

11 THE DEFENDANT: No.

12 THE COURT: One of the consequences of pleading guilty
13 is that you will likely be deported and barred from reentry
14 into this country.

15 Do you understand that, sir?

16 THE DEFENDANT: Yes.

17 THE COURT: Did you discuss that circumstance with
18 Ms. Shroff?

19 THE DEFENDANT: Yes.

20 THE COURT: All right. The Court must require that
21 you make financial restitution to any person who I find was
22 injured by reason of your crimes.

23 Do you understand that?

24 THE DEFENDANT: Is it possible for you, your Honor, to
25 repeat that?

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1 THE COURT: Yes. Financial restitution means making
2 someone who was injured by your criminal conduct financially
3 whole, compensating them. Now, if it turns out that I find
4 someone was injured by reason of your conduct, I'm required to
5 make that person whole by imposing a restitution obligation on
6 you.

7 Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Ms. Shroff, is it your client's intention
10 to admit the forfeiture allegations in paragraphs 7 through 12
11 of the information today?

12 MS. SHROFF: Yes, your Honor.

13 THE COURT: All right. I take it Mr. Ahmed is not
14 serving any other sentence, state or federal, or being
15 prosecuted in state court for any crime, is that correct,
16 Ms. Shroff?

17 MS. SHROFF: He's not being prosecuted nor is he
18 serving time for any other crime.

19 THE COURT: Thank you very much.

20 Now, Mr. Ahmed, in sentencing you I will receive a
21 presentence report prepared by the office of probation which
22 gives me background information and a recommended range of
23 sentence under the sentencing guidelines.

24 After hearing from your lawyer and from the
25 government, I will have my own obligation to determine the

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1 correct guideline range in this case. Even after determining
2 the proper guideline range, I need not follow it and can
3 sentence you all the way up to the statutory maximum. The
4 guidelines are advisory and they're not binding on the Court.
5 They are one of the factors that are considered under the
6 sentencing statute which is known as Section 3553(a).

7 Do you understand all that?

8 THE DEFENDANT: Yes.

9 THE COURT: Now, I understand that you have entered
10 into a plea agreement with the government.

11 Is that correct, sir?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. Let me show you an eight-page
14 document addressed to Sabrina Shroff and Sean Maher dated
15 June 13 on Department of Justice letterhead, and I will ask you
16 whether that is your plea agreement with the government?

17 THE DEFENDANT: Yes.

18 THE COURT: Has anyone threatened you or forced you in
19 any way to enter into the plea agreement or to plead guilty in
20 this case?

21 THE DEFENDANT: No.

22 THE COURT: Is that your signature on the last page of
23 the plea agreement?

24 THE DEFENDANT: That's correct.

25 THE COURT: Did you have the plea agreement translated

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1 into the Arabic language for you?

2 THE DEFENDANT: Yes. He translated for me.

3 THE COURT: All right. Did you discuss the plea
4 agreement with your lawyer, Ms. Shroff?

5 THE DEFENDANT: Yes.

6 THE COURT: Did you understand the plea agreement
7 before you signed it?

8 THE DEFENDANT: Yes.

9 THE COURT: All right. Ms. Shroff, could you briefly
10 review with me the process of review with your client?

11 MS. SHROFF: Your Honor, the review of the plea
12 agreement?

13 THE COURT: Yes.

14 MS. SHROFF: I visited with Mr. Ahmed at the MCC, and
15 I visited along with and without the interpreter several times
16 between June 14 and today. I visited with Mr. Ahmed this
17 morning along with the Arabic interpreter. We did not have a
18 word-for-word written translation of the document, but Mr. --
19 I'm sorry, I don't know Fouad's last name.

20 THE COURT: The interpreter.

21 MS. SHROFF: Right. He translated each paragraph as I
22 reviewed it with my client, and I ensured that Mr. Ahmed
23 understood each paragraph of the plea agreement.

24 THE COURT: All right. Thank you, Ms. Shroff.

25 Mr. Ahmed, does this plea agreement contain all of

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1 your understandings with the government?

2 MS. SHROFF: Your Honor, I'm sorry. I meant -- I
3 apologize. I meant that I reviewed it on -- I reviewed it
4 yesterday, which was June 12, and then I reviewed it the day
5 before, which was June 11. Today is the 13th.

6 THE COURT: We haven't gotten up to the 14th yet.

7 MS. SHROFF: So that's when I got the plea agreement
8 and --

9 THE COURT: Was on the 12th.

10 MS. SHROFF: -- I think we got it late 11th and I
11 reviewed it with him on the 11th and the 12th.

12 THE COURT: All right. Thank you.

13 Mr. Ahmed, does the plea agreement contain all of your
14 understandings with the government?

15 THE DEFENDANT: Yes.

16 THE COURT: Has anyone made any promises or given you
17 any inducements to enter into the plea agreement or to plead
18 guilty?

19 THE DEFENDANT: Other than what exists in this plea
20 agreement, the ten years and all of that, nothing else.

21 THE COURT: All right. Nothing that's not set forth
22 in the agreement has been promised to you; is that what you're
23 telling me?

24 THE DEFENDANT: No.

25 THE COURT: Okay. I want you to know, Mr. Ahmed, that

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1 any prediction, calculation or estimate that anyone has made to
2 you as to what sentence I might give you is not binding on the
3 Court and if it turns out to be wrong, you will not be
4 permitted to withdraw your guilty plea.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: All right. Now, one of the features of
8 your agreement with the government is that you and the
9 government have agreed on a guideline range that applies in
10 your case and, indeed, that guideline range is actually not a
11 range but a single number of 120 months' imprisonment.

12 Is that correct, sir?

13 THE DEFENDANT: Yes.

14 THE COURT: Well, that agreement as to the stipulated
15 guideline sentence is binding on you and it's binding on the
16 government, but it's not binding on the Court. I have my own
17 obligation to determine the correct guideline sentence. It
18 cannot exceed 120 months in this case, and the guideline range
19 is one of the factors in determining the sentence.

20 One of the features of your plea agreement with the
21 government is that if I should sentence you to the 120 months,
22 the government has agreed not to appeal. But you have also
23 agreed that if I sentence you to the 120 months or less than
24 120 months, you agree that you will not appeal or collaterally
25 attack that sentence. You have waived your right to appeal or

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1 collaterally attack a sentence unless the sentence is above the
2 120 months.

3 Do you understand that, sir?

4 THE DEFENDANT: Yes.

5 THE COURT: And, as I've said, I cannot lawfully give
6 you a sentence in excess of 120 months' imprisonment. Of
7 course, I can impose fine, supervised release and the mandatory
8 assessment, the forfeiture and the restitution.

9 Do you understand all that?

10 THE DEFENDANT: Yes.

11 THE COURT: All right. Mr. Naftalis, what are the
12 elements of the crime? In other words, what would the
13 government have to prove beyond a reasonable doubt and what in
14 summary would be the government's evidence on Counts One and
15 Two were this case to go to trial?

16 MR. NAFTALIS: Yes, your Honor.

17 With respect to superseding information S2 10 CR 131,
18 Count One charges a violation of 18 U.S.C. 371, namely, that
19 the defendant conspired to provide material support to a
20 designated foreign terrorist organization, here, Alshabaab.

21 The elements that the government would prove beyond a
22 reasonable doubt at trial would be:

23 First, that the defendant entered into an agreement to
24 provide material support or resources with at least one other
25 person.

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1 Second, that the support or resources that were to be
2 provided were destined for a designated foreign terrorist
3 organization, here, Alshabaab.

4 Third, that the defendant knew one of three things
5 about Alshabaab: either that it was designated by the
6 Secretary of State of the U.S. as a foreign terrorist
7 organization or that it engaged in terrorist activity or that
8 it engages in terrorism.

9 Lastly, either the defendant or a coconspirator would
10 have to -- we'd have to prove that a defendant or a
11 coconspirator took at least one overt act in furtherance of
12 said conspiracy.

13 Lastly, to satisfy the jurisdictional element, your
14 Honor, the government would prove that the defendant was first
15 brought or first landed in the United States in the Southern
16 District of New York.

17 Count Two also charges a violation of 18 U.S.C. 371,
18 namely, conspiring to receive military-type training from
19 Alshabaab between January 2009 and November 2009.

20 The elements are similar but I'll go over them.

21 First, that the defendant agreed with one or more
22 persons to receive military-type training.

23 Second, that the military-type training to be received
24 was from a designated foreign terrorist organization, here,
25 Alshabaab again.

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1 Third, that the defendant knew that Alshabaab was an
2 FTO or engaged in terrorism or terrorist activities.

3 And, lastly, that the defendant or a coconspirator
4 took at least one overt act in furtherance of the conspiracy.

5 And, lastly, there's the jurisdictional element, as
6 before, that the defendant was first brought into the United
7 States into the Southern District of New York.

8 Were this case to go to trial, your Honor, the
9 government would prove every element beyond a reasonable doubt
10 through the defendant's confession or some part of it, law
11 enforcement testimony, both of the FBI and abroad, wiretap
12 intercepts, cooperating witnesses, photographic evidence,
13 physical evidence recovered from the defendant, experts in
14 explosives from the FBI. I think that would be it, your Honor.

15 THE COURT: And with regard to the overt acts?

16 MR. NAFTALIS: With regard to the overt acts, your
17 Honor, for example, with respect to he conspired to receive
18 material support, the government would prove, for example, by
19 the testimony of witnesses that the defendant in fact handed
20 over a loaded AK-47 to a commander of Alshabaab while he was
21 leaving Somalia.

22 With respect to the training count, your Honor, the
23 government would prove through telephonic intercepts and/or the
24 defendant's admissions that he traveled to an Alshabaab guest
25 house for the purpose of receiving military-type training from

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1 Alshabaab, among others.

2 THE COURT: Mr. Ahmed, please tell me in your own
3 words what you did that leads you to believe that you are
4 guilty of the crimes charged in Counts One and Two.

5 THE DEFENDANT: In the year of 2009, in Somalia, I
6 agreed with others to give material support by donating 2,000
7 euro to an organization that I know that United States consider
8 it to be a terrorist organization. This organization is called
9 Alshabaab.

10 And in 2009, in Somalia, I asked other people and they
11 agreed to allow me to join a training camp, military training
12 camp, and I knew that United States considered that camp to be
13 a camp belonging to a terrorist organization and that
14 organization was known to me by United States that this
15 organization is a terrorist organization. Again, this
16 organization is called Alshabaab, and I went to the center of
17 Alshabaab, which is close to Barawee, for that reason.

18 THE COURT: All right. Ms. Shroff, is there any basis
19 to challenge the government's proffer with regard to
20 jurisdiction and venue, i.e., that the defendant was first
21 brought to the United States in this district?

22 MS. SHROFF: I know of no facts with which to
23 challenge that.

24 THE COURT: All right. Does the government agree
25 there's a sufficient factual predicate for a plea of guilty to

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1 Count One and Two of the superseding information?

2 MR. NAFTALIS: It does, your Honor.

3 THE COURT: All right. Ms. Shroff, do you agree that
4 there's a sufficient factual predicate?

5 MS. SHROFF: Yes, your Honor.

6 THE COURT: Ms. Shroff, are you aware of any valid
7 defense that would likely prevail at trial or any other reason
8 why your client should be precluded from pleading guilty?

9 MS. SHROFF: Your Honor, I have discussed each likely
10 defense with my client and explored them fully with him and
11 informed him and again discussed them thoroughly. With that
12 knowledge, Mr. Ahmed has decided to proceed and plead guilty.

13 THE COURT: All right. Mr. Ahmed, do you have any
14 questions for me?

15 THE DEFENDANT: No, I have no questions, your Honor.

16 THE COURT: All right. With regard to Count One of
17 the superseding information S2 10 CR 131, how do you plead,
18 guilty or not guilty?

19 THE DEFENDANT: Guilty.

20 THE COURT: With regard to Count Two of the
21 information, how do you plead, guilty or not guilty.

22 THE DEFENDANT: Guilty.

23 THE COURT: With regard to the forfeiture allegations
24 which are contained in the information in paragraphs 7 through
25 12, do you admit those allegations or do you deny those

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1 allegations?

2 THE DEFENDANT: I don't deny, your Honor.

3 THE COURT: All right. Well, when you don't deny, is
4 that the same as admitting?

5 THE DEFENDANT: Yes.

6 THE COURT: All right. Based upon your responses to
7 my questions and my observations, I find that you know your
8 rights, you know the consequences of pleading guilty, and
9 there's a factual basis for your plea of guilty.

10 Your plea of guilty and your admission to the
11 forfeiture allegations are accepted.

12 I further find that the plea agreement was knowingly
13 and voluntarily entered into.

14 I'm going to order a presentence investigation and
15 report and direct that no interview of you take place unless
16 Ms. Shroff or her representative or Mr. Maher are present.
17 It's important that you be candid, honest, truthful with the
18 people who prepare the report. Tell them the good things about
19 your life and the not so good things. The report will be
20 important in my decision on sentencing.

21 Before the day of sentencing, you will have an
22 opportunity to go over that report with an Arabic language
23 interpreter. I urge you to do that. If there are any mistakes
24 in the report, point them out through the interpreter to your
25 lawyer so that your lawyer can point them out to me.

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1 THE DEFENDANT: Yes.

2 THE COURT: Sentencing in this case is set for
3 November 2, 2012, at 11:30 a.m.

4 Is there anything further from the government?

5 MR. NAFTALIS: A moment, if I can confer with
6 Ms. Shroff?

7 THE COURT: Yes.

8 (Pause)

9 MR. NAFTALIS: May I just add one thing to the record,
10 your Honor?

11 THE COURT: Yes, you may.

12 MR. NAFTALIS: And I've talked to Ms. Shroff about
13 this. I just wanted to just state that under -- it applies to
14 prior credit of time already in custody being applied to the
15 term of imprisonment that may be imposed here, that by order of
16 statute 18 U.S.C. 3585, it is that a defendant may receive
17 credit for prior service of time if it relates to the same
18 course of conduct, but that is a BOP determination. And I'm
19 just putting on the record that the statute exists and the BOP
20 makes that determination.

21 THE COURT: Not the Court.

22 MR. NAFTALIS: Not the Court or the government.

23 THE COURT: Right.

24 MS. SHROFF: Your Honor, may I have a second with
25 Mr. Naftalis?

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1 THE COURT: Yes.

2 (Pause)

3 MR. NAFTALIS: And I can represent, your Honor, that
4 the government states that, in its opinion, the defendant, when
5 he began -- when he was picked up in November '09 until he was
6 flown to the United States was in custody for the same course
7 of conduct as he is held here. While it's still BOP's
8 determination, the government represents that is its take on
9 the facts.

10 THE COURT: Right. There's no dispute that once
11 post-indictment he was arrested by U.S. authorities and flown,
12 that by operation of law, the Bureau of Prisons must give him
13 credit for that time. Correct?

14 MR. NAFTALIS: Yes, your Honor, after arrest.

15 THE COURT: So you are referring to the time when he
16 was arrested in Kano, Nigeria, until the time that he was
17 arrested by U.S. authorities in Nigeria, that there is no
18 obligation to give him credit for time served, that's a BOP
19 determination and out of the control of the Court and the
20 government?

21 MR. NAFTALIS: Correct, your Honor.

22 THE COURT: Ms. Shroff, do you understand that?

23 MS. SHROFF: No. I understand that since Mr. Ahmed
24 was not serving any time from November 20, 2009 onward and was
25 held in Abouja on no Nigerian charges whatsoever and, in fact,

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1 that time should be credited to him towards this case and the
2 government at sentence will take no contrary view when that
3 argument is made by defense counsel. That is my understanding.

4 THE COURT: But the point that I understood
5 Mr. Naftalis to be making is that determination, that you're
6 free to urge that and indeed I think I heard the government say
7 and acknowledge that he was held on the same course of conduct.
8 But the authority who makes that determination is not the
9 government and it's not the Court. It's the Bureau of Prisons.

10 Do you dispute that? The Court can make a
11 recommendation to the Bureau of Prisons.

12 MS. SHROFF: I don't dispute anything with the Court
13 because, obviously, there are no agreements between the parties
14 and the Court. I just want to be clear that my understanding
15 is that the government's position will be at sentence that he
16 should be credited with every day he spent in custody starting
17 in November 20, 2009. That is their position to be
18 communicated to the Bureau of Prisons.

19 THE COURT: But that last part is the important part
20 for not only for you to understand but, more importantly, for
21 your client to understand that when the government stands up
22 and urges this or you urge it and they don't oppose it, those
23 are merely words on the record. And, yes, the Court can
24 recommend things to the Bureau of Prisons. But the important
25 point that I want to make sure your client understands that for

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1 that time period, that is a BOP determination, not a judicial
2 determination.

3 MS. SHROFF: That's correct, your Honor. And, of
4 course, Mr. Ahmed reserves and retains every application he
5 made, can possibly make in the event the Bureau of Prison gets
6 it wrong. That's fine.

7 THE COURT: I understand that as well. Have you
8 discussed this topic with your client, Mr. Ahmed?

9 MS. SHROFF: We have, your Honor. We in fact
10 discussed it, and I discussed it again with the government
11 which is what prompted them to inform the Court.

12 THE COURT: All right. Anything further from the
13 government?

14 MR. NAFTALIS: No, your Honor. Thank you.

15 THE COURT: Anything further from the defense?

16 MS. SHROFF: Your Honor, may I have a second?

17 THE COURT: You may.

18 (Defendant and counsel conferring)

19 MS. SHROFF: Thank you, your Honor.

20 THE COURT: All right. And I simply want to commend
21 Mr. Naftalis, Ms. Strauber, who is not here today, you,
22 Ms. Shroff, and also Mr. Maher for the professional way in
23 which this case has been conducted from beginning to end; and I
24 thank you all for your hard work.

25 We're adjourned.